

### **III. Remarks**

#### **A. Status of the Application**

Claims 1, 8-17, 19 and 28-38 are pending herein. Claims 28 - 38 have been added and find support in the specification as filed and as amended. This Amendment is timely filed within the shortened two-month statutory period, which ends on November, 22, 2006.

Support for the language "six or more essential saccharides" is found in the specification as amended based on the incorporation by reference of International Publication No. 98/06418, which corresponds to U.S. Patent No. 6,929,807. U.S. Patent No. 6,929,807 is related to U.S. Patent Application Nos.: 10/294,121 filed on November 14, 2002; 10/797,344 filed on March 10, 2004; 10/797,760 filed on March 10, 2004; and 10/885,545 filed on July 06, 2004 which claim the benefit of U.S. Patent Application No. 09/242,215.

Reconsideration of this application in light of the following remarks is respectfully requested.

#### **B. Rejection Under 35 U.S.C. §103(a)**

The Board of Appeals and Interferences found new grounds for maintaining the rejection under 35 U.S.C. § 103 based on the references cited and Claims 1, 8-17, 19 presented for appeal. The Board found a *prima facie* case of obviousness based on U.S. Patent No. 5,576,015 to Donzis (hereafter referred to as "Donzis '015"), U.S. Patent No. 5,531,989 to Paul (hereafter referred to as "Paul '989") and International Publication No. WO 97/05884 to Plaut (hereafter referred to as "Plaut '884").

In response to the finding of a *prima facie* case of obviousness, Applicant submits herewith a Declaration of Dr. Bill H. McAnalley under 37 C.F.R. §1.132 in reply to the rejection, which is incorporated in its entirety herein. Applicant respectfully submits that there are at least three reasons why the combination of the prior art to formulate a *prima facie* case fails. Attached hereto as Exhibit A is the Declaration of Dr. Bill McAnalley, the named inventor of the present invention that addresses what was known in the art and the effect of the product that is based on the present invention.

As stated in the Declaration, respectfully submitted herewith, the *prima facie* case fails for the following reasons: (1) despite the availability of the cited art to the skilled artisan their combination had never occurred and/or that the combination had never become a commercially

viable product until the formulation of the present invention was invented; (2) that the product upon entry into the market has enjoyed strong commercial success; and (3) that users of the product have compared it to the options available in light of the prior art and that the present invention is superior in result to those formulations. As a result of these three facts the present invention, as claimed, has met a long-felt need and commercial success and is therefore, non-obvious.

These secondary considerations rebut the *prima facie* case for obviousness because, despite their availability for over 5 years prior to the filing date of the present application, the references had never been combined, nor had a viable product become available. As soon as the product became available, it has enjoyed (and continues to enjoy) widespread acceptance and sales, indicating that the consuming public had a long-felt and unaddressed need at the time the patent application was filed and which has been fulfilled by the ImmunoSTART® product. As can be found at the following website, <http://www.mannapages.com/sharethegift/fod.asp?fodnumber=1010801>, ImmunoSTART® includes: Sugars, Colostrum (bovine), Beta-1,3/1,6 Glucans, Lactoferrin and Citrus Pectin.


Therefore, for all of the foregoing reasons, it is requested that the rejection of claims 1, 8-17 and 19 under 35 U.S.C. §103(a) over the combination of Donzis '015, Paul '989 and Plaut '884, be withdrawn.

**CONCLUSION**

In light of the foregoing amendment and remarks, Applicant submits that Claims 1, 8-17 and 19, and new claims 28-38 are in condition for allowance, and an early Notice of Allowance of all pending claims is respectfully solicited. No fees are deemed necessary for the filing of the present document. The examiner is invited to call the undersigned at the below-listed telephone number if a telephone conference would expedite or aid the prosecution and examination of this application.

Dated: November 22, 2006.

Respectfully submitted,



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